July 26, 2024

Nico Janssen
Jane Beyer
Washington Office of the Insurance Commissioner
302 Sid Snyder Ave
Olympia, WA 98501
Submitted via email to: rulescoordinator@oic.wa.gov

Re: Health Care Benefit Managers Prepublication Draft Comments (R 2024-02)

Dear Mr. Janssen & Ms. Beyer,

On behalf of Cambia Health Solutions, Inc. and its affiliates, including Regence BlueShield, Regence BlueCross BlueShield of Oregon, Regence BlueShield of Idaho, Inc., Asuris Northwest Health, and BridgeSpan Health Company ("Cambia"), thank you for the opportunity to provide feedback on the Health Care Benefit Manager rulemaking pre-publication draft. We are respectfully resubmitting several of our comments on the CR-101 for your consideration as those concerns remain in the pre-publication draft of the rules. We are also providing additional comments based on the draft rule language.

WAC 284-180-120 Applicability and Scope.

The most challenging aspect of implementation remains interpreting the broad statutory definition of a Health Care Benefit Manager (HCBM). The definition of HCBM in RCW 48.200.020(4) states "Health care benefit manager means a person or entity providing services to, or acting on behalf of, a health carrier or employee benefits programs, that directly or **indirectly** impacts the determination or utilization of benefits for, or patient access to, health care services, drugs, and supplies…" (emphasis added). Without further clarity, the use of the term "indirectly" in this definition creates ambiguity ripe for misinterpretation and varied application across the industry. That fact became evident with the recent OIC regulatory activity surrounding the Change Healthcare cybersecurity event and application of HCBM requirements. Cambia urges the OIC to use this rulemaking to clarify the statute's scope and provide guidance to all affected entities regarding the real-world application of the HCBM definition. Without additional guidance, carriers may only ultimately understand the OIC's interpretation through enforcement action. If found out of compliance, carriers are asked to cease doing business with these entities, which can have a significant impact on carriers' ability to remain functionally operational and continue doing business in Washington.

Pursuant to RCW 48.200.010, the legislative intent of the HCBM statute is to focus oversight on HCBMs that "exercise broad discretion" and are "making health care decisions on behalf of carriers." Based on the legislature's language, we believe their intent was to regulate entities who explicitly have decision making power that impacts patient care and/or benefits. To help narrow the interpretation of the statutory HCBM definition and ensure it is commensurate with the legislative intent, we suggest the following language for incorporation into the OIC's regulations:

> WAC 284-180-120
> (1) This chapter applies to health care benefit managers as defined in RCW 48.200.020**.**
> (a) This chapter does not apply to persons or entities providing services to, or acting on behalf of, a health carrier or employee benefits programs without authority to exercise broad discretion to affect the determination or utilization of benefits for, or patient access to, health care services, drugs, and supplies or when the health carrier or employee benefit program retains sole decision-making authority.
> (2) This chapter does not apply to the actions of health care benefit managers providing services to, or acting on behalf of:
> (a) Self-insured health plans;
> (b) Medicare plans;
> (c) Medicaid; and
> (d) Union plans.

WAC 284-180-220 - Health care benefit manager registration.

In the prepublication draft, WAC 284-180-220 (1) requires HCBMs to have an approved registration prior to conducting business in Washington state. Since SB 5601 passed and the OIC's implementing rules were finalized in 2020, there were instances where the approval process for an HCBM application was very lengthy. We respectfully request the OIC set a timeframe for review of an HCBM registration. This will provide the industry with a level of certainty to leverage business opportunities and plan operations accordingly. We have provided potential draft language below for this section to address our concerns.

> WAC 284-180-220(4) "If the commissioner takes no action within thirty calendar days after submission, the health care benefit manager registration application is deemed approved, except that the commissioner may extend the approval period an additional thirty calendar days upon giving notice before the expiration of the initial thirty-day period. Approval may be subsequently withdrawn for cause."

WAC 284-180-325 Required notices

WAC 284-180-325 requires carriers to post information that identifies each HCBM on their website. Specifically, it requires the information to be "…easy to find on the carriers' website with a link from the web page utilized for enrollees." The prepublication draft proposes to also require this information be

"prominently displayed" on that webpage. We recommend the rules further define "prominently displayed;" carriers need to understand the OIC's expectation / intent with this added language.

Within WAC 284-180-325 and throughout the prepublication draft, the OIC is proposing to apply the HCBM requirements to HCBMs contracted with a carrier "either directly or indirectly or indirectly through subcontracting with a HCBM or other entity." What does it mean to "indirectly" contract? We recommend the OIC define "indirectly" and/or provide examples of arrangements that fall under this category to help us understand the scope of what needs to be disclosed and ensure accurate compliance. Additionally, what does "other entity" mean in the proposed revisions?

WAC 284-180-455/WAC 284-180-460 – Carrier and HCBM filings:

The prepublication draft proposes changes to WAC 284-180-455 that creates a new filing requirement for carriers. The proposed language will require carriers to additionally file "…all contracts to directly or indirectly provide health care benefit management services on behalf of a carrier, such as but not limited to, health care benefit management services contracts that result from a carrier contracting with a health care benefit manager who then contracts or subcontracts with another health care benefit manager." Again, we recommend defining what "contracts indirectly" means, especially since the draft language implies there may be more applicable indirect contracting arrangements beyond the example provided where a contracted HCBM subcontracts with another HCBM.

Please also consider that a carrier contracts with an HCBM to provide services to the carrier. A carrier has a contractual relationship with the HCBM. A carrier is not a party to the contract the HCBM has with its subcontractors, and that contract would be confidential and proprietary to the HCBM and its subcontractor. RCW 48.200.040(2) already requires HCBMs to file any contracts they hold with another HCBM that is in support of a contract with a carrier, making this proposed carrier filing requirement redundant. Furthermore, RCW 48.43.731(1) only requires carriers to file contracts between the carrier and an HCBM. Requiring carriers to file another entity's subcontract(s) goes beyond the statutory scope for carrier filing requirements. For those reasons, our strong preference is removal of the requirement for carriers to file indirect or HCBM subcontractor contracts from the draft rules.

There are also concerns about the potential disclosure of proprietary information and trade secrets within these contracts. We suggest implementing measures to protect sensitive information, such as allowing for redaction of confidential details or summarizing key points instead of full contract disclosure.
For example, could the HCBM System for Electronic Rate and Form Filing (SERFF) filings be bifurcated where the agreement would be subject to potential disclosure, but the pricing could be separately filed in SERFF and would not be subject to potential disclosure? We believe provider agreements filed in SERFF have a similar setup that could be applied in this instance.

To reduce the administrative burden, we propose considering alternative methods to achieve transparency. For instance, providing a high-level overview or summary of subcontracting arrangements or requiring

only HCBMs to disclose its subcontracting relationships as part of its HCBM registration could be sufficient to meet the regulation's goals without requiring detailed contract disclosures.

Under current regulations governing provider contract filings, the OIC must respond to a filing submission within 30 days (WAC 284-170-480(3)). We respectfully request similar provisions applicable to carrier and HCBM contract filings. The industry needs a predictable schedule to create business processes and plan operations. For that reason, we propose the following language updates:

> WAC 284-180-455(7): If the commissioner takes no action within thirty calendar days after submission, the carrier's form is deemed approved, except that the commissioner may extend the approval period an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period. Approval may be subsequently withdrawn for cause.
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> WAC 284-180-460 (4): If the commissioner takes no action within thirty calendar days after submission, the health care benefit manager's form is deemed approved, except that the commissioner may extend the approval period an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period. Approval may be subsequently withdrawn for cause.

Cambia Health Solutions, Inc. has several licensed health insurance carriers in Washington state (Regence BlueShield, Regence BlueCross BlueShield of Oregon, Asuris Northwest Health, BridgeSpan Health Company, and Regence BlueShield of Idaho, Inc.). Most of our HCBM agreements predate the HCBM requirements and were written at the Cambia Health Solutions, Inc. parent company level. Currently, we are required to file each HCBM agreement multiple times for each corresponding Washington carrier, even though they are the same contract document, and SERFF allows a filing to list more than one company. We would appreciate relief from this duplicative administrative work, which requires multiple SERFF filings, and responding to the same objections on the duplicative filings. For that reason, we respectfully request a new provision in this section of rules allowing a single HCBM contract filing if the HCBM agreement is at the parent/holding company level and applicable to more than one Washington licensed carrier.

Other Comments

Thank you for considering our comments. We appreciate the opportunity to work with the OIC to continually improve the HCBM oversight program. Please let me know if you would like to discuss any of our feedback further. I can be reached at Jane.Douthit@Regence.com or (206) 332-5212.

Sincerely,

Jane Douthit
Cambia Health Solutions
Sr. Public & Regulatory Affairs Specialist